



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Switlik Parachute Company, Inc.

File: B-275539

Date: March 3, 1997

Glenn L. Blackwell, Esq. and Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.

Carolyn E. Riemer, Esq., and Harry D. Boonin, Esq., Department of the Navy, for the agency.

Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's decision to cancel solicitation and resolicit requirement after termination of an improper contract award, rather than make award to protester under original solicitation, was unobjectionable where requirement significantly increased since issuance of original solicitation, and a consolidated procurement for the increased quantity offers potential cost savings and reduced administrative costs and burdens.

DECISION

Switlik Parachute Company, Inc. protests the cancellation of request for proposals (RFP) No. N00383-96-R-P612, issued by the Department of the Navy for anti-exposure hood assemblies, which provide insulated protection to military air crew members. Switlik argues that, rather than canceling the RFP, the agency should have made award to Switlik as the low offeror under the RFP.

We deny the protest.

The RFP was issued on June 29, 1996 for a total of 3,165 hood assemblies, with delivery of 2,327 units to Norfolk, Virginia (CLIN 0001AA) and 838 units to San Diego, California (CLIN 0001AB). The RFP was subject to a qualified products list, with only Mustang Engineering Tech Apparel and Switlik qualified to provide the item; it also required first article testing.

On October 22, 1996, after receiving offers from Switlik (lowest price) and Mustang and twice extending the closing date, the Navy issued amendment No. 0003, which

reduced the Norfolk quantity by 991, from 2,327 to 1,336 units (for a resulting total quantity on both line items of 2,174 units) and further gave offerors the opportunity to revise their prices. This reduction was based on the agency's fiscal year 1997 budget execution process, where a policy decision was made to eliminate the "safety level," a previously specified quantity of items in excess of the expected requirements, which served as a cushion to protect against stock outages during procurement lead time. In response to the amendment, Mustang did not submit a revised price. Switlik did raise its price for the Norfolk line item, which increased its total price, but its total price remained low. However, in evaluating the prices, the agency mistakenly calculated the firm's price on the basis of an increase for both line items; this caused Switlik's price to be higher than Mustang's. Unaware of the miscalculation, the agency made award to Mustang as the low, responsible offeror.

After receiving notice of the award, Switlik brought the miscalculation to the agency's attention. In response, the agency terminated Mustang's contract for the convenience of the government and advised the offerors that there would be a new solicitation based on an increase in the required quantity. The agency reports that at the time of termination the requirement had increased by 528 units and has since increased by another 211 units, for a total increase of 739 units (to a total of 2,913 units).¹

Switlik questions the validity of the agency's assertion that the required quantity has increased, suggesting that the agency has manipulated certain inventory figures, and argues that, in any case, instead of resoliciting the Navy should make award to Switlik under the original RFP based on its low price, and obtain any needed additional quantity through a second procurement.

Switlik's arguments are without merit. The record indicates that the Navy's legitimate required quantity has materially increased. As shown on the agency's "item status report," dated January 14, 1997, the increased quantity was based on a computer-generated calculation using the software program "Automated Item Manager Toolkit," which consisted primarily of three variables--(1) reorder level (ROL), including safety level; (2) back orders; and (3) procurement lead time planned program requirements (PCLT/PPR). The ROL was derived from historical data for the average demand over the lead time. Specifically, the data input for this item consisted of a quarterly demand of 259.22 units (the record includes historical demand data); this was multiplied by a total lead time of 3.8 quarters (2 quarters

¹Where, as here, the agency terminates a contract and resolicits, it is in effect canceling the RFP, and we will determine the propriety of the agency action by applying the rules pertaining to the cancellation of a solicitation. Information Ventures, Inc., B-241441.4; B-241441.6, Dec. 27, 1991, 91-2 CPD ¶ 583.

administrative lead time and 1.8 quarters production lead time) to arrive at an ROL of 985 units. A safety level of 0 was provided for in the ROL calculation, reflecting the agency's policy as of the October 22 amendment. The back order variable was 1,407, based on an electronic listing of requisitions for the item. The PCLT/PPR variable--representing anticipated requirements not encompassed by the ROL or back orders, for example, a using activity's notice of a future requirement--was 234 units. These variables--985, 1,407 and 234--totaled 2,626 units. This total then was reduced by 231 units (28 on hand and 203 due under contract or from other sources), for a net requirement of 2,395 units, and then, as a final adjustment, increased by 518 units to reflect economic ordering quantity (EOQ)² considerations, for a final total of 2,913 units. This represents a 34-percent increase above the amended quantity in the original solicitation; we consider this to be a material change in the requirement. See Budney Indus., B-252361, June 10, 1993, 93-1 CPD ¶ 450 (39-percent increase in quantity constituted a significant increase such that resolicitation was warranted).

Switlik contends that the increase in the agency's current needs essentially reflects the shifting of the supposedly abandoned safety level quantity (991 units) to the ROL variable (985 units) in order to artificially augment the agency's procurement needs. This is refuted by the record. An "item status report," dated January 14, 1996, as well as other electronic reports, dated December 19, November 20, and October 15, 1996, show the progression of the agency's quantity needs over the period in question, and indicate that the quantity increase was largely due, not to inclusion of a safety level, but to an increase in back orders. Moreover, as discussed, the January 14, 1997 status report clearly shows an ROL level of 985, and a 0 safety level quantity; this is in contrast to the agency's needs as calculated on October 15, 1996 (prior to the agency's policy decision to delete the safety level quantity), where the status report shows an ROL of 1,930 units (almost double the January level), but specifically includes a safety level of 983 units. The specific figures and calculations in the status reports, which are not disputed by the protester, corroborate the agency's explanation of how the ROL was calculated. There thus is no basis for questioning the validity of the increase in the agency's needs.

Cancellation of an RFP after prices have been revealed, as here, is proper where the record contains plausible evidence or a reasonable possibility that a decision not to cancel would be prejudicial to the government or the integrity of the procurement system. Budney Indus., supra. One circumstance under which cancellation is appropriate is where the needs of the agency have changed in some material respect since issuance of the original solicitation. Id.

²The EOQ is generated by a formula to determine the most economical quantity based on the Navy's administrative costs related to buying and storing the item.

The agency's decision to cancel and resolicit was proper due to the change in the requirement. While the agency could procure the total requirement under two separate procurements, it is clear that doing so would not be in the government's interest. Under 10 U.S.C. § 2384a(a)(1) (1994), agencies are to procure supplies in the quantity that will result in the most advantageous cost. Because manufacturing/production costs generally decrease as quantities increases, procuring the entire quantity under one solicitation reasonably could be expected to result in a lower unit price than proceeding with two separate procurements. In fact, Switlik's own response to the amendment to the original RFP--it raised its price for the line item under which the quantity was reduced--confirms that this price/quantity relationship exists for the items being procured here. Further, the administrative burden on the agency, as well as administrative costs, would be increased by the need to administer two separate contracts, potentially with two different contractors. These considerations provide a sufficient basis for the agency to proceed with a resolicitation encompassing the entire required quantity. See Budney Indus., supra.

The protest is denied.

Comptroller General
of the United States